United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED SEP 15 1958
Joseph W. Stewart
CLERK

No. 14,552

ROBYE M. JOYCE, Individually and as Administratrix of the Estate of Edward M. Joyce, deceased,

Appellant,

v.

109

BYRON M. SCOTT, Creditor,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THOMAS J. PEARSON
927 - 15th Street, N. W.
Washington 5, D. C.

Attorney for Appellant

Washington, D. C. ROBERT I. THIEL Printer EX 3-0025

STATEMENT OF QUESTIONS PRESENTED

1. Did the District Court err in ruling that monies paid by the Small Business Administration to the widow of a deceased Federal employee as unpaid compensation due such employee at the time of his death, belonged to the deceased employee's general estate and not to the widow, and in ordering the widow to account to the estate therefor, where the deceased employee died intestate, and without designating any beneficiary to receive unpaid compensation due him at time of his death and where said monies in the amount of $23,555.31 were paid to the widow by the Federal Government in accordance with an Act of Congress to facilitate the settlement of accounts of certain officers and employees of the Government, Chapter 518 of Public Law 636, 81st Congress, August 3, 1950 (64 Stat. 395), 5 U.S.C.A. Sec. 61(f)?

2. Where an agency of the Federal Government made a determination upon appellant's application that she was the widow of a deceased Federal employee; that she was entitled as the widow to receive unpaid compensation due to the employee at the time of his death pursuant to the provisions of an Act of Congress to facilitate such payments, Chapter 518 of Public Law 636, 81st Congress, August 3, 1950 (64 Stat. 395), 5 U.S.C.A., Sec. 61(f); and where such Federal agency acting upon its determination made payment of such monies to the appellant widow, did the court have jurisdiction to enter an order invalidating said determinations and payment to the widow by ruling that said monies were general assets of the deceased employee's estate and ordering the widow to account to the estate for such monies received, upon the application of an alleged creditor of the estate made during the administration thereof where neither the Federal Government nor the Federal agency which made said determinations and payment were made party to the proceedings?

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,552

ROBYE M. JOYCE, Individually and as Administratrix of the Estate of Edward M. Joyce, deceased,

Appellant,

v.

BYRON M. SCOTT, Creditor,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from an order of the United States District Court for the District of Columbia holding Probate Court in Administration No. 91976, Estate of Edward M. Joyce, Deceased, granting appellee's (an alleged creditor of the Estate) petition for a rule to show cause and ordering appellant to deliver up to and account to the estate for monies paid to her personally by the Small Business Administration, an agency of the United States Government, as widow of the deceased, a Government employee, and an order denying appellant's motion for

rehearing. The District Court had no jurisdiction. Jurisdiction of this Court is founded upon the provisions of Title 28, Section 1291, United States Code.

STATEMENT OF THE CASE

Edward M. Joyce died intestate in the District of Columbia on November 16, 1956. He was survived by his widow, Robye M. Joyce, the appellant herein, two adult sons by his widow, and two adult daughters by a former marriage (J. A. 1). His widow was appointed administratrix of his estate, (J. A. 3) was duly qualified and her appointment is in full force and effect.

Prior to his death the decedent had been a classified civil service employee in the Small Defense Plants Administration of the Federal Government. He was discharged from this said employment by a reduction in force order on September 30, 1953. As an honorably discharged veteran of World War I, he claimed protection of the Veteran's Preference Act of 1933, as amended, and demanded reinstatement to his position which was transferred to the Small Business Administration by an Act of Congress which had abolished the former agency and created the latter. Decedent's claim for reinstatement was denied by the Civil Service Commission and he sought review in the U. S. District Court for the District of Columbia in Civil Action No. 2077-54 (J. A. 2).

While said action in District Court was pending, Edward M. Joyce died on November 16, 1956. Thereafter his widow, as administratrix, was substituted as party plaintiff but the case was dismissed by the trial court on April 12, 1957 (J. A. 9) as having been rendered moot on account of decedent's death.

Robye M. Joyce, the widow, then made application to the Small Business Administration for unpaid compensation due her deceased husband at the time of his death, alleging that he had been an employee thereof until the time of his death, and that he had died without naming a beneficiary to receive his unpaid compensation (J. A. 15, 16)

The Small Business Administration approved the said application and on November 14, 1957, made payment to the widow the sum of $23,555.31 paying said money to her as the widow of Edward M. Joyce, said payment being made "on account of salary due Edward M. Joyce as an employee of the Small Business Administration, Washington, D. C. on date of death November 16, 1956, for the period October 12, 1953, to November 16, 1956." (J. A. 10, 11).

Thereafter, on April 4, 1958, one Byron M. Scott, alleging himself to be a creditor of decedent probated a claim against decedent's estate in the amount of $9,000.00 (J. A. 4-5). Said alleged creditor then filed a petition in the administration case of decedent's estate (J. A. 5-7) for a rule to show cause and to compel decedent's widow to account to the estate for monies she had received. After argument of counsel, the trial court ruled that said monies belonged to the estate as general assets thereof and passed an order to that effect on June 16, 1958 (J. A.11). The appellant widow by counsel objected to the court's ruling. A Motion for rehearing was presented (J. A. 12-16) but was denied without argument (J. A. 17). This appeal is from the ruling and order of the District Court that the monies paid to decedent's widow as unpaid compensation due to decedent at the time of his death belonged to decedent's estate and not to the widow.

STATUTES INVOLVED

Act to Facilitate the Settlement of Accounts of Deceased Employees of the United States, 5 U.S.C.A. 32, Section 61(f) and 61(g) (64 Stat. 395)

61f. "In order to facilitate the settlement of the accounts of deceased civilian officers and employees of the Federal Government and of the Government of the District of Columbia (including wholly owned and mixed-ownership Government corporations) all unpaid compensation due such an officer or employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following

order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

"First, to the beneficiary or beneficiaries designated by the officer or employee in writing to receive such compensation filed with the Government agency in which the officer or employee was employed at the time of his death, and received by such agency prior to the officer's or employee's death;

"Second, if there be no such beneficiary, to the widow or widower of such officer, or employee;

"Third, if there be no beneficiary or surviving spouse, to the child or children of such officer or employee, and descendents of deceased children, by representation;

"Fourth, if none of the above, to the parents of such officer or employee, or the survivor of them;

"Fifth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased officer or employee, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased officer or employee."

61g. "For the purposes of sections 61f - 61k of this title the term 'unpaid compensation' means the pay, salary, or allowances, or other compensation due on account of the services of the decedent for the Federal Government or the Government of the District of Columbia. ***."

Administrative Procedure Act of June 11, 1946, chapter 324

Section 10, 60 Stat. 243, 5 U.S.C.A. 1009.

"(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action *** in any court of competent jurisdiction."

STATEMENT OF POINTS

1. Where a deceased Federal employee failed to designate a beneficiary to receive unpaid compensation due him from the employing agency at the time of his death and the agency paid such unpaid compensation to the employee's widow under the provisions of Title 5, Section 61(f), such monies belonged exclusively to the widow and not to the deceased employee's estate.

2. The District Court holding Probate Court had no jurisdiction, upon the petition of an alleged creditor of the decedent's estate, to enter an order directing the widow of decedent (who was also administratrix) to account to and deliver to the Estate monies paid to her personally as unpaid compensation due her deceased husband at the time of his death where the petition of the alleged creditor amounted to a collateral attack upon the action of the Government agency and the Government was not served with notice or process or made a party to the action.

SUMMARY OF ARGUMENT

I. Unpaid compensation due to a Federal employee at time of death is not an asset of his estate where he had failed to designate a beneficiary to receive such unpaid compensation and left a surviving widow.

The Small Business Administration paid to the widow of decedent (appellant) the unpaid compensation due her husband at the time of his death on November 16, 1956. Such payment was made under

64 Stat. 395, 5 U.S.C.A., Section 61f. which provided that if the employee failed to designate a beneficiary to receive such monies it should be paid first to his widow or, if none, to succeeding beneficiaries designated by the statute.

The meaning and intent of the statute is clear and unambiguous and leaves no room for doubt as to its meaning and purpose to provide for and expedite the payment of such monies to the families of the deceased and the last order of precedence to his estate.

The statute because of its clarity has been construed only once in a reported case although it became effective August 3, 1950. In the case of Ashton v. Ashton, 117 A. 2d 459, the Municipal Court of Appeals for the District of Columbia decided the identical issue as presented here -- namely, whether the money belonged to the widow or to the estate of her deceased husband employee. That case was correctly decided in favor of the widow who had received payment from the Government.

II. The District Court holding Probate Court had no jurisdiction upon application of an alleged creditor of the deceased employee's estate, to review and set aside the determination and action of the Small Business Administration which made payment to the deceased employee's widow under the statute (5 U.S.C.A. 61f.) of unpaid compensation due at the time of the employee's death.

The appellee, alleging that he was a creditor of the deceased employee's estate, in a collateral attack upon the determination and award of the Small Business Administration to the widow of the deceased Government employee of the unpaid compensation due him at the time of his death, petitioned the Probate Court in the Administration of the decedent's estate for an order to show cause to compel the widow to account for and deliver such sums received to the estate. The court ordered her to account to the estate for such sums holding that they constituted assets of the estate.

The appellant (widow) contends that the court had no jurisdiction to enter such an order because:

1. The appellee had no standing to contest the validity of the determination and award made by the Small Business Administration in that he had no interest in the matter and suffered no legal wrong by the Agency's action.

2. The appellee had no right to seek review of the agency's action under any theory since he was a stranger to the transaction and had no right of review under the particular statute or under the Administrative Procedure Act (60 Stat. 244, Title 5 U.S.C.A. 1001 et seq.).

3. Even if appellee had a right of review it could not be done by way of a collateral attack upon the agency's action. Appellee would have had to take direct action to set aside the agency's determination which would have required him to conform to the Federal Rules of Civil Procedure. Furthermore, the proper officials of the Federal Government were indispensable parties to such an action and appellee did not seek to join or serve notice upon them.

ARGUMENT

I

UNPAID COMPENSATION DUE TO A FEDERAL EMPLOYEE AT TIME OF DEATH IS NOT AN ASSET OF HIS ESTATE WHERE HE HAD FAILED TO DESIGNATE A BENEFICIARY TO RECEIVE SUCH UNPAID COMPENSATION AND LEFT A SURVIVING WIDOW.

The facts show without dispute that the monies in question were paid by the Small Business Administration to appellant as the widow of the deceased employee on account of unpaid salary due him on the date of his death - November 16, 1956 (J. A.10-11). The sum was paid to appellant under an Act of Congress of August 3, 1950, Chapter 518 of Public Law 636, 81st Congress (64 Stat. 395) 5 U.S.C.A. Sec. 61(f) which provided:

"All unpaid compensation due such an officer or employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

"First, to the beneficiary or beneficiaries designated by the officer or employee in writing to receive such compensation filed with the Government agency in which the officer or employee was employed at the time of his death, and received by such agency prior to the officer's or employee's death;

"Second, if there be no such beneficiary, to the widow or widower of such an officer, or employee;

* * *

"Fifth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased officer or employee, or if there be none, to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased officer or employee."

The only case squarely in point in which this same question arose was before the Municipal Court of Appeals for the District of Columbia, Ashton v. Ashton (1955) 117 A. 2d 459, wherein the court held that such funds did not constitute an asset of decedent's estate, and stated at p. 461:

"The legislative history of the law clearly indicates that one purpose of the law was to save the Government expense in the adjusting and settling of the accounts of deceased employees, but it also indicates that another purpose was to provide more expeditious payment to the families of employees. Our study of the statute convinces us that its effect is to give the employee the power to designate a beneficiary, and in the absence of such designation by the employee, the beneficiary is automatically designated in the order fixed by the statute. Thus, no right of the employee is curtailed. He may designate his estate or any person he chooses, as beneficiary. It is only when he fails to designate a beneficiary

> that the law fixes the beneficiary. His failure to designate constitutes an election to accept the beneficiary fixed by law. The statute was enacted in 1950 and decedent lived until 1952. It must be presumed that he knew of his right to name a beneficiary and elected not to exercise that right.
>
> "The same law defined unpaid compensation to mean the pay, salary, or allowances, or other compensation due on account of the services of the decedent (5 U.S.C.A. Sec. 61g). Under the above law the widow (appellant) was paid decedent's unpaid compensation, because decedent had failed to designate a beneficiary ***."

In addition to the above cited case, this same Act has been construed by the Comptroller General of the United States effecting the same conclusion. Opinion of the Comptroller dated January 28, 1954, "B-118203."

The language of the statute is clear and unequivocal. Its intent to create statutory beneficiaries in order of precedence in the absence of a designated beneficiary is unmistakable. This, no doubt, accounts for the fact that the Ashton case cited above is the only case of record in which the question presented here has been raised although the statute has been in effect for more than eight years, is national in scope, and affects all Federal employees and those of the District of Columbia.

Moreover, the designation of statutory beneficiaries has been overwhelmingly accepted by the Courts under other statutes effecting the same results as here in providing that certain classes of beneficiaries should take and not the decedent's estate. For example, it has become firmly established that under the Federal Employer's Liability Act, 45 U.S.C.A. 51, providing that rights of a person suffering injuries shall survive to the personal representative for the benefit of the surviving widow and children, any amount recovered for the death of the decedent does not become part of the general assets of the decedent's

estate, is not subject to his debts, and is not to be distributed under any statute of descent and distribution.

Taylor v. Taylor, 232 U. S. 363, 34 S. Ct. 350

Friedman v. McHugh, 168 F. 2d 350

In addition, our own wrongful death statute in the District of Columbia, Section 16-1201, 1203 D. C. Code (1951), (62 Stat. 487, Ch. 507, Sections 1 and 2) specifically provides that any recovery shall not be appropriated to the payment of the debts or liabilities of the decedent, but shall inure to the benefit of the surviving spouse and next of kin.

II

THE DISTRICT COURT HOLDING PROBATE COURT HAD NO JURISDICTION UPON APPLICATION OF AN ALLEGED CREDITOR OF THE DECEASED EMPLOYEE'S ESTATE, TO REVIEW AND SET ASIDE THE DETERMINATION AND ACTION OF THE SMALL BUSINESS ADMINISTRATION WHICH MADE PAYMENT TO THE DECEASED EMPLOYEE'S WIDOW UNDER THE STATUTE (5 U. S. C. A. 61(f)) OF UNPAID COMPENSATION DUE AT TIME OF THE EMPLOYEE'S DEATH.

Here, the appellee alleging he was a creditor of the decedent, petitioned the Probate Court (District Court) in the Administration of the deceased employee's estate for an order to show cause to compel appellant (the widow of decedent and the administratrix of his estate) to account to the estate for the monies paid to her by the Small Business Administration as unpaid compensation due to decedent at the date of his death. Clearly, appellee was seeking a review of the action of the Small Business Administration which had already determined that the widow was entitled to the money under the statute (5 U.S.C.A. 61(f)) and that it did not belong to decedent's estate. There can be no question but that the District Court's action in declaring that the money so paid to the appellant belonged to the estate of her deceased husband, and its order directing her to account for and deliver it up to the estate, constituted a review and a reversal of the agency's actions.

In order for the appellee to contest the validity of the agency's actions, he must show that such action involves a private substantive legally protected interest recognized by common law or created by statute. Doehla Greeting Cards, Inc. v. Summerfield, (D.C.), 116 F. Supp. 68. This he has not done. Appellee suffered no legal wrong by the agency's action necessary to give him a right of review. May Department Store v. Brown, 60 F. Supp. 735.

The statute itself under which the Small Business Administration acted gave appellee no right of review whatever. In fact, by its very terms it negates any such right, in effect, by providing that "such payment shall be a bar to recovery by any other person of amounts so paid." Nor does the legislative history of the statute (1950 U. S. Code Cong. Service, P. 2866) indicate that Congress intended to confer any such right, or that such a review is possible.

Since the statute under which the agency acted gave appellee no right of review of the agency's action, his right to such review, if any, must be derived from some other right given him by law. In this connection, it is significant to note that appellee cited no provision of law or other authority to support his standing to challenge the Small Business Administration's action. Appellant contends that no such right exists.

The Administrative Procedure Act (Act of June 11, 1946, 60 Stat. 244, Title 5, U.S.C.A. 1001) established to provide for judicial review of the actions of the Federal government by its agencies would seem to provide the only basis for a right of judicial review possible to appellee since it provides at 5 U.S.C.A. Sec. 1009:

> "(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.
>
> "(b) The Form of proceeding for judicial review shall be any special statutory review proceeding

> relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action * * * in any court of competent jurisdiction."

From the above quoted act it is a prerequisite that appellee must have suffered a "legal wrong" or have been "aggrieved" by the agency's action in making payment to the widow to entitle him to judicial review of such action. Here the appellee suffered no legal wrong nor was he aggrieved by the agency's action. Kansas City Power and Light Co. v. McKay, 96 App. D. C. 273, 225 F. 2d 924, Cert. Den. 350 U. S. 884, 76 S. Ct. 137.

The appellee's basic contention is that the decedent's estate is indebted to him for services rendered decedent. (J. A. 4-5). The agency's action does not in any way affect appellee's claim against the estate. Thus, in the effect of the action appellee would derive no right of review since it does not regulate or affect him adversely. Lee v. Civil Aeronautics Board, 96 App. D. C. 299, 225 F. 2d 950. The agency's action did not cause appellee to suffer any legal wrong of any kind; it imposed no obligation upon him; denied him no right; nor fixed any legal relationship upon him, therefore, appellee had no standing to seek any review of the agency's action. Chicago and Southern Air Lines v. Waterman S. S. Corp., 333 U. S. 103, 68 S. Ct. 431.

Even if it could be argued that appellee had a right of review, which is denied by appellant, such review would, according to the requirements of subsection (b) of the Administrative Procedure Act cited above, have been required to have taken an appropriate form of legal action. Such an action would have required appellee to originate the action himself and comply with the requirements of the Federal Rules of Civil Procedure. A petition for an order to show cause filed in the proceeding for Administration of decedent's estate where no summons was issued nor service made upon the United States Attorney did not initiate the legal action necessary to endow the court with

jurisdiction. Warren v. Arzt, 18 F.R.D. 11. The procedure when taken by appellee in the Probate Court amounted only to a collateral attack upon the determination and award made by the Small Business Administration. The action of the Agency of the Federal Government was not subject to collateral attack and such procedure could give the Court no jurisdiction. Venner v. Mich. Cent. R. R. Co., 271 U. S. 127; U. S. v. Railway Exp. Agency, 101 F. Supp. 1008.

Furthermore, the Government officials responsible for the agency's actions were indispensible parties to any attack upon the agency action. The appellee did not make the Government a party to his action without which the Court had no jurisdiction. Podovinnikoff v. Miller, 179 F. 2d 937; Medalha v. Shaughnessy, D. C. N. Y., 102 F. Supp. 950.

CONCLUSION

The determination and award made to the widow appellant by the Small Business Administration was proper and in accordance with law, and the District Court had no jurisdiction to make any order affecting this subject matter. Its order directing the appellant to account for such sums received by her should be reversed with costs to the appellee.

Respectfully submitted,

THOMAS J. PEARSON
927 - 15th Street, N. W.
Washington 5, D. C.
Attorney for Appellant

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JOINT APPENDIX

1 [Filed January 30, 1957]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding Probate Court

In Re Estate of	:	Administration No. 91976
Edward M. Joyce, Deceased	:	Address of Petitioner:
	:	1832 Wisconsin Ave., N.W.
	:	Washington, D. C.

PETITION FOR LETTERS OF ADMINISTRATION

The petition of Robye M. Joyce respectfully represents to this Honorable Court:

1. That your petitioner is an adult citizen of the United States and a resident of the District of Columbia, and files this petition as the widow of Edward M. Joyce, the above named decedent.

2. That said Edward M. Joyce was a citizen of the United States and a resident of the District of Columbia and departed this life on the 16th day of November, 1956, at Mt. Alto Hospital in said District, and your petitioner has made diligent search and inquiry for a will of said decedent, and has neither found one nor obtained any information that there was one, and verily believes that the decedent died intestate.

3. That the decedent left him surviving your petitioner, Robye M. Joyce, an adult, his widow, and the following named persons, who are all adults, and who are his only heirs at law and next of kin: Edward M. Joyce, Jr., a son, residing at 1125 Park Ave., New York, New York; Charles R. Joyce, a son, residing at 3628 Connecticut Avenue, N. W., Washington, D. C.; Kathryn Capper, a daughter, residing at 717 Wing Street, Glendale, California; and Patricia Ingelhardt, a daughter, residing at 1460-A East California Street, Glendale, California.

4. That the decedent left no real estate nor interest in any real estate in the District of Columbia or elsewhere.

5. That said decedent left no personal property, other than clothing and personal effects of no value, in the District of Columbia or elsewhere, but that the decedent at the time of his death had a claim for unpaid salary against the Small Business Administration for wrongful discharge from his employment with the federal government, and said claim is pending in the United States District Court for the District of
2 Columbia in Civil Action No. 2077-54 and, if successful, may amount to between $20,000.00 and $25,000.00.

6. That decedent so far as your petitioner is able to ascertain left debts estimated at $3,000.00, besides the expenses of his funeral in the sum of $476.00.

7. That petitioner is advised that, as decedent's widow, she is entitled to apply for letters of administration to issue to herself.

Wherefore, the premises considered, the petitioner prays:

1. That letters of administration be granted to this petitioner, and that she be permitted to qualify by giving an undertaking in a nominal amount only until it is determined whether decedent's claim for unpaid salary aforesaid is successful, conditioned for the faithful performance of her trust.

2. That the Court grant petitioner such other and further relief as to the Court may seem just and proper.

/s/ Robye M. Joyce,
Petitioner.

/s/ Thomas J. Pearson
Attorney for Petitioner,
927 15th Street, N. W., Zone 5.

DISTRICT OF COLUMBIA, SS:

Robye M. Joyce, being first duly sworn, deposes and says: That she has read the foregoing petition by her subscribed and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein alleged upon information and belief,

and that as to those matters she believes them to be true.

/s/ Robye M. Joyce

Subscribed and sworn to before me this 29th day of January, 1957.

/s/ Harold M. Elwin
Notary Public, D. C.

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3 [Filed February 4, 1957]

ORDER GRANTING ADMINISTRATION

Upon consideration of the petition of Robye M. Joyce, filed herein the 30th day of January, 1957, for letters of administration, and it appearing to the satisfaction of the Court that Edward M. Joyce, deceased, departed this life intestate, it is by the Court this 4th day of February, 1957,

Adjudged, Ordered and Decreed that Robye M. Joyce be and she is hereby appointed Administratrix of the Estate of Edward M. Joyce, deceased, and that letters of administration on said estate issued to Robye M. Joyce upon her filing and undertaking with Security approved by the Court, in the sum of _____ dollars, conditioned for the faithful performance of the trust in her reposed provided further that said Administratrix shall report to the Court, and file such additional undertaking as the Court may require, before accepting assets in excess of $1,000.00.

/s/ David A. Pine
Judge

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13 [Filed May 22, 1957]

INVENTORY OF MONEY AND DEBTS DUE TO DECEASED

Amount due to deceased on claim against United States Government not yet determined. Claim for back salary still pending and under consideration. Supplemental report will be filed at such time as amount of claim is determined. No other source of money or debts to deceased is known.

DISTRICT OF COLUMBIA, to wit:

I. Robye M. Joyce, Administratrix of the Estate of Edward M. Joyce, late of the District of Columbia, deceased, do solemnly swear

that the foregoing schedule is a true and perfect inventory of all the MONEY belonging to the deceased, and of all the DEBTS due the said deceased, which have come to my hands or knowledge and that I will well and truly charge myself with all money and all and every such debt or debts as shall hereafter come to my knowledge or possession.

/s/ Robye M. Joyce
Administratrix * * *

[Jurat, dated May 17, 1957]

DOCKET OF CLAIMS NUMBER 46
Folio 236

ESTATE OF: Edward M. Joyce Byron N. Scott, Esq. 777 14th St., N. W.	Thomas J. Pearson, Attorney of record Professional services rendered Apr. 4-58	Admn. No. 91976 9,000.00

Form No. 87 Case No. 91976 Thomas J. Pearson, Esq., Atty. of Record
Recorded in Docket of Claims No. 46
Folio 236

Title 18, Sec. 517, 1951 Edition, D.C. Code (Sec. 343, old Code). "Passing of claims not conclusive. In no case shall the order made by the probate court that an account or claim will pass when paid be deemed of validity to establish such claim or account; but in case the executor or administrator thinks fit to contest the same, such account or claim shall derive no validity from the order aforesaid, but shall be proved in the same manner as if no such order had been made."

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
Holding Probate Court

District Of Columbia, To Wit:

Personally appeared Byron N. Scott, who, being duly sworn or affirmed according to law, doth depose and say that the annexed account against Edward M. Joyce for professional services rendered is correctly stated; that the services for which said charges were made were performed as charged; that the charges are correct; and the account just and true as stated; that there is now due and owing thereon the sum of Nine Thousand Dollars; that no part of said sum has ever been paid or in any manner settled or secured, and that there are no deductions or set-offs of any kind except such as are therein specified and credited.

/s/ Byron N. Scott

$9,000.00 ATTEST:
(See Sec. 343 of the Code quoted above.) [Jurat, dated April, 3, 1958]
/s/ Arthur C. Smith
Deputy Register

Law Offices
BYRON N. SCOTT
* * *

Sterling 3-1025
Wyatt Building
777 Fourteenth Street, N. W.
Washington 5, D. C.

Edward M. Joyce
1832 Wisconsin Avenue, N. W.
Washington, D. C.

- -

To professional services rendered in re Joyce v. Barnes, et al, C. A. 2077-54 in the United States District Court for the District of Columbia during the period February 6, 1956 to April 10, 1957 . . . . . .$9,000.00

---

5 [Filed April 25, 1958]

PETITION BY CREDITOR FOR RULE TO SHOW CAUSE FOR DISCOVERY AND DELIVERY OF ASSETS

The petition of Byron N. Scott respectfully represents to the Court as follows:

1. That by Order entered on the 4th day of February, 1957, letters of administration on the above estate were granted to Robye M. Joyce, who has since qualified as Administratrix by taking the prescribed oath and giving the initial bond required.

2. That said bond was in the amount of $1,000.00 subject to a further undertaking should the assets exceed $1,000.00 in which event the said Order provided that the said Administratrix "shall report to the Court, and file such additional undertaking as the Court may require, before accepting assets in excess of $1,000.00."

3. That in her Inventory of Money and Debts filed herein dated the 17th day of May, 1957, the said Administratrix listed only a "claim

6 for unpaid salary against the Small Business Administration for wrongful discharge from his (decedent's) employment with the Federal Government" which claim was stated as pending in Civil Action No. 2077-54 in the Civil Division of this Court in an amount between $20,000.00 and $25,000.00.

4. That your petitioner is advised and believes, and upon information and belief avers that the said Administratrix has been paid the said claim mentioned in her said Inventory of Money and Debts, the proceeds of which belong to the estate of the said Edward M. Joyce, deceased, and should be reported as an asset thereof and accounted for by the said Administratrix, but that she has failed and refused to do so and has failed and refused to divulge to the attorney for your petitioner any information with respect to the said claim, as more fully appears from the letter of your petitioner's attorney to Thomas J. Pearson, Esq., attorney for the said Administratrix, dated April 8, 1958, a copy of which is attached hereto and incorporated herein by reference.

5. That your petitioner has filed herein a Proof of Claim against the said estate in the sum of $9,000.00, which is unpaid, and that there are no assets reported in the said estate other than the claim listed in the said Inventory of Money and Debts to which your petitioner can look for payment of his claim.

WHEREFORE, the premises considered, your petitioner prays:

7 1. That a Rule to Show Cause be issued by this Court directed to the said Robye M. Joyce requiring her to appear on a day certain to answer and disclose what assets, papers and data and what information she has in her possession belonging to the above-named decedent and the location of same, particularly whether or not the claim of the said estate against the Small Business Administration aforementioned has been paid and, if so, the amount thereof.

2. That upon the hearing of said Rule this Court require said Robye M. Joyce to deliver up, report and account for the assets, papers and other information which may be in her possession belonging to the said estate, and that she be required to file such additional undertaking as the Court may order.

3. And for such other and further relief as to the Court may seem just and proper.

/s/ Byron N. Scott

DISTRICT OF COLUMBIA, SS:

BYRON N. SCOTT, being first duly sworn, deposes and says that he has read the foregoing Petition by him subscribed and that he knows the contents thereof, and that the matters and things stated therein are all true to the best of his knowledge and belief.

/s/ Byron N. Scott

SUBSCRIBED AND SWORN to before me this 23rd day of April, 1958.

/s/ Anne Mazor
Notary Public, D. C.

My Commission Expires January 1, 1962
[SEAL]

MEHLER & GOLDSBOROUGH

By /s/ Richard A. Mehler, Attorney for Petitioner
2000 K Street, N. W., Washington 6, D. C.

---

8 [Filed, April 25, 1958]

Law Offices
MEHLER AND GOLDSBOROUGH

Suite 401, NADA Building
2000 K Street, N. W.
Washington 6, D. C.

April 8, 1958

Mr. Thomas J. Pearson, Esquire
927 - 15th Street, N. W.
Washington, D. C.

Re: Byron N. Scott
vs.
Estate of Edward M. Joyce, Deceased

Dear Mr. Pearson:

Enclosed is proof of claim filed on behalf of Byron N. Scott against the estate of Edward M. Joyce, deceased, in the amount of $9,000.00 for professional services rendered the decedent in the matter of Joyce v. Barnes, et al during the period February 6, 1956 to April 10, 1957.

As you know, Mr. Scott's claim is based upon the agreement of the decedent to pay to him one-third of the recovery resulting from the litigation in question. However, when I discussed the matter with you the other day over the telephone you were not disposed to advise me

whether or not the Small Business Administration had paid the estate, nor were you disposed to advise me of the exact amount involved.

Under the circumstances, we filed Mr. Scott's claim in the amount of $9,000.00, it being our understanding that the sum of $27,000.00 has been or will be paid the estate by the Small Business Administration.

I would appreciate receiving notice of your intentions with respect to the payment of Mr. Scott's claim at your earliest convenience.

Sincerely,

/s/ Richard A. Mehler

RAM/chF

enc.

8-A [Filed April 28, 1958]

RULE TO SHOW CAUSE

Upon consideration of the petition of Byron N. Scott filed herein on the 25th day of April, 1958, it is by the Court this 28th day of April, 1958

ORDERED that Robye M. Joyce, Administratrix of the estate of Edward M. Joyce, deceased, appear in this Court at 10:00 a.m. on the 19th day of May, 1958 and show cause, if any she has, why she should not disclose all the assets, papers, data and information she has in her possession belonging to the above estate and the location of same, and why she should not be required by this Court to deliver up, report and account for all of the said assets, papers and other information, and why she should not be required to file an additional undertaking such as is provided for by the Order of this Court dated the 4th day of February, 1957; provided that a copy of said petition and this Order be served upon her on or before the 9th day of May, 1958.

/s/ Edward M. Curran
JUDGE

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9 [Filed May 2, 1958]

RESTATED FIRST AND FINAL ACCOUNT OF
ROBYE M. JOYCE, Administratrix

Letters issued February 18, 1957	Assets Received
It has been finally determined that the decedent left no assets whatever of any value. Decedent left only clothing and personal articles of no value.	None
Civil Action No. 2077-54 was dismissed by Order of the U.S. District Court on April 12, 1957. Thereafter a claim for unpaid compensation was paid directly to the widow of the decedent in accordance with 5 U.S.C.A. 32,Sec. 61f. Such payments under the statute do not come into the estate.	
No other claims for assets are known to Administratrix, but if any assets of the estate are discovered in the future, they will be promptly reported to the Court.	
Totals	None

10 DISTRICT OF COLUMBIA, to wit:

I, the undersigned, Robye M. Joyce, Administratrix of the estate of Edward M. Joyce, late of the District of Columbia, deceased, do solemnly swear that the foregoing account is just and true, and that I have bona fide paid, or secured to be paid, the several sums for which I claim credit and allowances.

/s/ Robye M. Joyce

* * *

[Jurat, Dated May 1, 1958]

11 [Filed May 5, 1958]

ANSWER TO RULE TO SHOW CAUSE

The Administratrix herein, Robye M. Joyce, by and through counsel, and in answer to the Rule To Show Cause issued against her by this Honorable Court on April 28, 1958, states as follows:

1. The Estate herein has no assets, and the Administratrix has no expectancy of recovering any assets on behalf of the Estate as shown by her Restated First and Final Account filed herein on the 2nd of May, 1958, which is incorporated by reference herein.

WHEREFORE, the Administratrix moves that the Rule be discharged.

/s/ Thomas J. Pearson
Attorney for Administratrix

* * *

POINTS AND AUTHORITIES

1. Section 61f., 5 U.S.C.A. 32.
2. Ashton vs. Ashton, D.C. Mun. Ct. Apps. (1955) 117 A. 2d 459.
3. Exhibit A attached hereto.

[Certificate of Service]

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12 ADVICE OF PAYMENT OF SETTLEMENT TO ACCOMPANY CHECK

UNITED STATES GENERAL ACCOUNTING OFFICE
Washington 25, D. C.

Claim No.: Z-529212 November 14, 1957
Division: Claims

Robye M. Joyce as widow of Edward M. Joyce, deceased,
1832 Wisconsin Avenue, N. W.
Washington, D. C.

(Checks to be drawn as below]

I have certified that there is due from the United States, payable from the appropriation(s) indicated, the sum of --

Dollars ($20,479.41)

on account of salary due Edward M. Joyce as an employee of the Small Business Administration, Washington, D. C. on date of death November 16, 1956, for the period October 12, 1953 to November 16, 1956, less interim earnings of $200.00 received during the Fall of 1954.

(Small Business Administration, Washington, D. C.)

73 M0100	$12,448.67
7360100	$ 8,030.74

Checks to issue:

Claimant as above	$20,432.00	
Treasurer of the United States, For credit to: 053599	$ 47.41	(No check issued)

This action taken to liquidate indebtedness of Robye M. Joyce to the United States for overpayment for sick leave for the period March 29 to April 20, 1953, while employed by the Public Housing Administration, Washington, D.C.

The amount of $3,076.90 is withheld pending further consideration as to Civil Service Retirement and other deductions.

The enclosed Treasury check is in settlement of said claim(s).

The Comptroller General of the United States,

By A. Weissman

CLAIMANT'S NOTICE

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14 [Filed June 16, 1958]

ORDER

This cause came before the Court on the 10th day of June, 1958, upon the petition filed herein by Byron N. Scott, a creditor of the above-entitled estate, for a rule to show cause for discovery and delivery of assets directed to Robye M. Joyce, Administratrix of the said estate, and upon consideration thereof and of the answer thereto filed herein by said Administratrix, and having heard argument of counsel for the respective parties, and the Court finding as a fact (a) that the said Administratrix has or rightfully should have now in her possession the sum of $20,479.41, representing the proceeds paid to her in settlement of the claim of the said estate against the Small Business Administration arising out of the wrongful discharge of the decedent, Edward M. Joyce,

from his employment with the Federal Government, and (b) that the said Administratrix has omitted and has failed and refused to return in her inventory or list of debts or otherwise to account for the said sum of $20,479.41, and the Court concluding as a matter of law that the said

15 sum of $20,479.41 constitutes an asset of the said estate, it is by the Court this 16th day of June, 1958,

ORDERED that Robye M. Joyce, Administratrix of the estate of Edward M. Joyce, deceased, be and she hereby is ordered and directed as follows:

1. Within 10 days of the date of this Order to transfer and deliver to the said estate and to return in an additional inventory herein, the aforesaid sum of $20,479.41 being an asset of the said estate; and

2. To file herein an additional undertaking with surety approved by the Court in the penal sum of $20,000; and

3. To transfer and deliver to and to return in an additional inventory filed herein such further sum or sums as may be paid to her on account of the said claim of the said estate against the Small Business Administration arising out of the wrongful discharge of the decedent Edward M. Joyce from his employment with the Federal Government.

/s/ Edward M. Curran
Judge

[Certificate of Service]

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16 [Filed June 24, 1958]

MOTION FOR REHEARING ON RULE TO SHOW CAUSE, TO SET ASIDE AND VACATE ORDER, AND TO DISCHARGE RULE

Comes now Robye M. Joyce, individually, and as the Administratrix herein, by and through counsel, and moves this honorable Court to rehear the Rule to Show Cause, and upon rehearing thereof, to vacate and set aside its Order entered herein on June 16, 1958, and to discharge said Rule to Show Cause, and as grounds therefor states as follows:

1. The Court had no jurisdiction to enter an order affecting the personal assets of Robye M. Joyce.

2. The finding of the Court is contrary to fact.

3. The finding of the Court and its ruling is contrary to law.

4. It is impossible for said Robye M. Joyce to comply with the order of the Court.

5. The order of the Court would reduce the entitlement of said Robye M. Joyce, widow of the decedent, by two-thirds.

6. Byron M. Scott, the alleged creditor of the estate herein did not perform services for Robye M. Joyce, the widow of decedent, nor for the estate herein, and did not perform any services for decedent in Civil Action No. 2077-54 as he has alleged.

7. All services to Robye M. Joyce, widow of decedent, and to the estate herein were performed by other counsel who has been paid for said services.

8. Such other and further reasons as will be brought to the attention of the Court at the time of hearing of this Motion.

/s/ Thomas J. Pearson
Attorney for Robye M. Joyce
Individually, and as Administratrix

[Filed June 24, 1958]

17 POINTS AND AUTHORITIES

1. The affidavit of Robye M. Joyce, widow of decedent, attached hereto and made a part hereof.

2. The payment voucher, dated November 14, 1957, accompanying payment of the funds in controversy, and incorporated herein by reference, shows without question or contradiction that said funds were paid to Robye M. Joyce personally, and not to the Estate. Therefore said funds are her own personal assets.

3. Said payment voucher also shows without question or contradiction that said funds were paid to said Robye M. Joyce "On account of salary due Edward M. Joyce ... on date of death November 16, 1956,... (Underscoring supplied.)

4. Said funds were paid to Robye M. Joyce personally in accordance with the law. Section 61(f), Title 5, U.S.C. at P. 32 provides that: "All unpaid compensation due to an officer or employee of the Federal Government at the time of his death shall be paid to the person or

persons surviving at the date of death, in the following order of precedence and such payment shall be a bar to recovery by any other person of amounts so paid:

"First, to the beneficiary or beneficiaries designated by the officer or employee in writing .... .

"Second, if there be no such beneficiary, to the widow or widower of such officer, or employee. (Underscoring supplied.)

"..... .

"Fifth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased officer or employee.

5. The case of Ashton v. Ashton, D. C. Mun. App. (1955), 117 A. 2d. 459 is directly in point. There the court held that where a federal employee failed to designate a beneficiary under Sec. 61(f), Title 5, U.S.C., all unpaid salary and accumulated leave accrued to the time of his death belonged to his widow and not to his estate.

6. The court has acquired no jurisdiction over the personal assets of Robye M. Joyce, no action or other proceeding having been
18 instituted against her in accordance with law so as to compel her to account for her personal assets.

7. To compel said Robye M. Joyce to comply with the Order of the Court entered herein on June 16, 1958, to turn over her personal assets to the Estate herein, would amount to the taking of private property without due process of law.

8. Said moneys were paid to Robye M. Joyce in November, 1957, over seven months ago. From the proceeds she has paid numerous obligations, and it would be financially impossible for her to comply with the Order of June 17, 1958, entered herein compelling her to account for said moneys.

9. The alleged creditor is guilty of laches in the unreasonable delay in presenting his claim, if any he has, since decedent died November 16, 1956, and further, said alleged creditor was invited by counsel for said Robye M. Joyce to file any claim he might have had at least a year prior to the time said claim was actually filed.

10. The moneys paid to Robye M. Joyce personally were determined by the Government to have been due to the decedent at the time of his death. That the determination was not made until after the decedent's death that said moneys were due does not alter the fact as to when they were due.

/s/ Thomas J. Pearson
Attorney for Robye M. Joyce,
Individually, and as Administratrix

[Certificate of Service]

19 AFFIDAVIT [Filed June 24, 1958]

DISTRICT OF COLUMBIA, SS:

Robye M. Joyce, having first duly sworn on oath, and in support of her Motion for Rehearing on the Rule to Show Cause, to Vacate the Order of the Court thereon, and to Discharge said Rule, deposes and states as follows:

That she is the widow of Edward M. Joyce, the decedent herein, and the duly appointed Administratrix of his Estate; that she has never received any assets belonging to, or on behalf of the Estate; and that after diligent search and inquiry she believes that there are no assets to be found belonging to the Estate, as shown by her Restated First and Final Account filed herein.

That she does not know Mr. Byron M. Scott, the alleged creditor of the Estate, has never seen or spoken to him, and does not believe that he ever performed any services for the decedent in Civil Action No. 2077-54, said alleged creditor not having entered his appearance in that action until after the death of decedent, without authorization, and contrary to her expressed wishes conveyed to said alleged creditor by her attorney.

That at no time did she, either personally or on behalf of the Estate herein, ever employ Byron M. Scott, the alleged creditor of the Estate, nor did said alleged creditor ever render any services to her personally, or on behalf of said Estate.

That following the death of Decedent on November 16, 1956, affiant engaged and was represented personally and as Administratrix

of said Estate by other competent counsel who has been paid for his services; That affiant's said counsel represented her and rendered valuable services for her in many matters including her claim as

20 widow of decedent against the U. S. Government for compensation due her and representing unpaid salary and annual leave due to decedent as an employee at the time of his death; That her own attorney filed said claim and handled all of the details thereof on her behalf; and that said alleged creditor had no part or performed any service therein.

That said claim which is the subject of this controversy was paid to her personally in November, 1957, in accordance with law; That she paid personal income taxes on said moneys and otherwise used said moneys as her own, paying a great many personal obligations and making gifts to her two sons, relying upon the payment of said moneys to her personally and the opinion of her attorney that said moneys belonged to her personally and not to the Estate of her deceased husband.

That her deceased husband died intestate, leaving surviving him two children of a prior marriage, and two children of his marriage to affiant; That affiant is informed that if said moneys were determined to belong to the Estate that under the laws of distribution and descent of the District of Columbia, she would be entitled to receive only one-third of said moneys, and the other two-thirds would be required to be distributed to the children of decedent; And that it is financially impossible for affiant to account for the moneys which she has used.

/s/ Robye M. Joyce

Subscribed and sworn to before me this 23rd day of June, 1958.

/s/ Walene E. Shields
Notary Public, D. C.

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21 [Filed June 27, 1958]

ORDER DENYING MOTION FOR REHEARING

Upon consideration of the motion of Robye M. Joyce for rehearing on rule to show cause, to set aside and vacate order entered herein on the 16th day of June, 1958, and to discharge said rule to show cause, it is by the Court this 27th day of June, 1958,

ORDERED, that the same motion be and the same hereby is denied.

/s/ Edward M. Curran
Judge

[Certificate of Service]

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22 [Filed June 26, 1958]

NOTICE OF APPEAL

Notice is hereby given this 26th day of June, 1958, that Robye M. Joyce, Individually, and as the Administratrix of the Estate of Edward M. Joyce, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 16th day of June, 1958, requiring her to account for, file additional undertaking for, and to transfer to the Estate herein, as an asset thereof, $20,479.41 and such other funds paid to her personally, as widow of decedent, by the U. S. Government under Sec. 61(f), Title 5, U.S.C.A., unpaid salary due to decedent at the time of his death.

/s/ Thomas J. Pearson
Attorney for Robye M. Joyce
Individually, and as Administratrix
927 Fifteen Street, N. W. (NA 8-0306)
Washington 5, D. C.

Copy To: Richard A. Mehler, Esq.
Attorney for Byron M. Scott
2000 K Street, N. W.
Washington 6, D. C.

BRIEF FOR APPELLEE AND SUPPLEMENTAL APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit
FILED NOV 17 1958
Joseph W. Stewart
Clerk

No. 14,552

144

ROBYE M. JOYCE, Individually and as Administratrix of the Estate of Edward M. Joyce, deceased, *Appellant*,

v.

BYRON N. SCOTT, Creditor, *Appellee*.

Appeal from the United States District Court for the District of Columbia

RICHARD A. MEHLER
GEORGE J. GOLDSBOROUGH, JR.
CHARLES P. HOVIS
Attorneys for Appellee

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

QUESTIONS PRESENTED

1. Whether moneys found due and payable for back salary under Title 5, Section 652(b)(2), United States Code, as the result of an adjudication made after death that the decedent's discharge as a preference eligible from Government employment was unjustified or unwarranted and in violation of the Veterans Preference Act of 1944, as amended, constitute an asset of the decedent's estate.

2. Whether upon a petition filed by a creditor as a person interested in a decedent's estate for a rule to show cause for discovery and delivery of assets the District Court had jurisdiction under D. C. Code, Section 20-504, to order the Administratrix to deliver to her decedent's estate moneys paid to her individually to which she asserted title in herself and adversely to the estate.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,552

ROBYE M. JOYCE, Individually and as Administratrix of the Estate of Edward M. Joyce, deceased, *Appellant*,

v.

BYRON N. SCOTT, Creditor, *Appellee*.

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE AND SUPPLEMENTAL APPENDIX

COUNTERSTATEMENT OF THE CASE

In its material parts, this appeal involves the following sequence of events:

May 14, 1954 — *Joyce* v. *Barnes* filed —

Civil Action No. 2077-54 entitled, "Edward M. Joyce, Plaintiff, vs. Wendell B. Barnes, et al., Defendants"

filed in the District Court by C. Braswell Collins, Esquire, seeking restoration of plaintiff's civil service employment with the Small Business Administration on the ground that his discharge therefrom violated the provisions of the Veterans' Preference Act of 1944, as amended. (J.A. 2; appellee's App. 1(a))

June 4, 1954 — *Kerr* v. *Barnes* filed —

Civil Action No. 2406-54 entitled, "Francis P. Kerr, Plaintiff, vs. Wendell B. Barnes, et al, Defendants" filed by C. Braswell Collins, Esquire, as a companion case to *Joyce* in that they involved similar facts, prayed for the same relief, and were governed by the same law. (No. 13,037 before this Court, 100 U. S. App. D. C. 51, 242 F. 2d 24)

January 11, 1955 — The District Court in *Kerr* granted summary judgment for the defendants. (No. 13,037, supra.)

December 2, 1955 — The District Court entered the following order in *Joyce* (Appellee's App. 4(a), 5(a)):

"Order Joining Cases for Purposes of Appeal"

"This cause came on to be heard the 10th day of October, 1955 on cross motions for summary judgment, and upon consideration thereof it was determined, and was stipulated by counsel for both parties, that the law in question is the same as that in Kerr vs. Barnes (2406-54) which has been noted for appeal; therefore it is by the Court this 2nd day of December, 1955,

"Ordered, that the final determination of Kerr vs. Barnes, shall also govern the instant controversy.

/s/ Luther W. Youngdahl
Judge

Seen, approved and agreed to:

/s/ Catherine B. Kelly
Assistant U. S. Attorney"

October 19, 1956 — The appeal in *Kerr* argued before this Court by Byron N. Scott, Esquire, Appellee. (No. 13,037, supra)

November 16, 1956 — *Joyce* died intestate. (J.A. 1, 2)

November 29, 1956 — *Kerr* reversed —

This Court set aside the judgment of the District Court in *Kerr*, 100 U. S. App. D. C. 51, 242 F. 2d 24, and remanded the cause for the entry of a final order granting *Kerr* the relief prayed for. (No. 13,037, supra)

January 30, 1957 — Petition for administration filed by Robye M. Joyce, appellant, in which she erroneously described as due "at the time of his death" a claim for $20,000.00 to $25,000.00 for unpaid salary growing out of decedent's wrongful discharge. In fact, the claim then pending was for reinstatement upon which the money claim in turn depended, thus representing only a contingency. (J.A. 1, 2)

February 4, 1957 — Letters of Administration granted appellant. (J.A. 3)

May 22, 1957 — Inventory of Money and Debts filed by appellant as administratrix describing the contingent asset above referred to as the only asset of the estate. (J.A. 3)

November 14, 1957 — Appellant received $20,479.41 representing settlement of back salary found due the decedent as a result of this Court's decision in *Kerr*. (J.A. 10, 11)

April 3, 1958 — Appellee filed his claim for $9,000.00 for services rendered decedent. (J.A. 4, 5)

April 25, 1958 — Petition for rule to show cause for discovery and delivery of assets filed by appellee alleging that appellant was in possession of but refused to deliver to the estate the moneys received from the Small Business Administration. (J.A. 5-7)

June 10, 1958 — Rule to show cause heard before the District Court which held:

"At the time of the decedent's death there was no determination that the decedent was entitled to anything. I therefore hold 61(f) is not applicable to the situation existing here. I will sign an order directing the widow to report and account for the assets of $20,479.41 in the estate." (Appellee's App. 5(a))

June 16, 1958 — District Court entered an order concluding as a matter of law that the sum of $20,479.41 received by appellant constituted an asset of the estate and directing the appellant to transfer the said sum to the estate and to account therefor in an additional inventory. (J.A. 11, 12)

STATUTES INVOLVED

United States Code, Title 5, Section 652(b)(2), providing:

"(2) Any person who is discharged, suspended, or furloughed without pay, under section 863 of this title, who, after answering the reasons advanced for such discharge, suspension, or furlough or after an appeal to the Civil Service Commission, as provided under such section, is reinstated or restored to duty on the ground that such discharge, suspension, or furlough was unjustified or unwarranted, shall be paid compensation at the rate received on the date of such discharge, suspension, or furlough for the period for which he received no compensation with respect to the position from which he was discharged, suspended, or furloughed. less any amounts earned by him through other employment during such period and shall for all purposes except the accumulation of leave be deemed to have rendered service during such period."

D. C. Code, Section 20-504, providing:

"*Concealment by executor or administrator.* If any person interested in any decedent's estate shall by

petition allege that the executor, administrator, or collector has concealed or has in his hands and has omitted to return in the inventory or list of debts any part of his decedent's assets, and the court shall finally adjudge and decree in favor of the allegations of the petition, in whole or in part, it shall order an additional inventory or list of debts, as the case may be, to be returned by the executor, administrator, or collector, and appraisement to be made accordingly, to comprehend the assets omitted, and the court may compel obedience to said order, and, if the same is not complied with, revoke the letters testamentary or of administration or of collection and order the bond of the executor, administrator, or collector to be put in suit."

SUMMARY OF ARGUMENT

Appellee's position is that the moneys paid to the appellant in settlement of the decedent's claims for back salary were not due at the time of decedent's death and did not become due until it was later established by this court in *Kerr* v. *Barnes,* 100 U. S. App. D. C. 51, 242 F. 2d 24, that his discharge from the Small Business Administration was unjustified or unwarranted. Since the discharge occurred under 5 U.S.C., Section 863, the moneys were payable according to 5 U.S.C., Section 652(b)(2), and not Section 61(f), as the appellant contends. The back salary, therefore, was not payable to the statutory beneficiary, designated in 61(f) but rather was properly payable to the estate.

In respect of jurisdiction, the District Court had the power under section 20-504, D. C. Code, to entertain appellee's petition for rule to show cause and to enter its order directing that the moneys for back salary be delivered by the widow to the estate.

ARGUMENT

I. TITLE 5, SECTION 61(f) AND 61(g), UNITED STATES CODE, ARE NOT APPLICABLE

Title 5, Section 61(f), U. S. Code, in providing for the settlement of accounts of deceased officers and employees of the Federal Government, refers exclusively to "unpaid compensation *due* such an officer or *employee at the time of his death.*" (Emphasis supplied) Section 61(g) of that Title defines the term "unpaid compensation" as "the pay, salary, or allowances, or other compensation *due* on account of the services of the decedent for the Federal Government." (Emphasis supplied)

The word "due" always imports a fixed and settled obligation or liability, *Black, Law Dictionary* (3rd ed. 1933); it implies a debt matured and therefore a breach in its nonpayment, *Yocum* v. *Allen,* 58 Ohio State 280, 50 N.E. 909; used without qualification it means owing and immediately payable, *Gies* v. *Bechtner,* 12 Minn. 279; *Berylwood Investment Company* v. *Graham,* 43 Cal. App. 2d 659, 111 P. 2d 467; it is only equivalent to payable, *Ball* v. *Northwestern Mutual Acc. Association,* 56 Minn. 414, 57 N.W. 1063.

In the absence of some special indication of intention to employ a different meaning, the word "due" when used in connection with an obligation to pay means that the legal right to claim the discharge of the obligation is complete as far as respects the element of time. *Conter* v. *State ex rel Berezner,* 211 Ind. 659, 8 N.E. 2d 75. According to ordinary usage and meaning, a debt or other obligation is due at the time when the creditor has the right to demand payment and to enforce collection, if not paid; and until that time it is not due. *Etz* v. *Perlman,* 103 N. J. Eq. 425, 143 A. 548; *Twine* v. *Locke,* 68 F. 2d 712 (2nd Cir. 1934).

When Joyce died he had not established his right to the office which he had held. Consequently the obligation for unpaid salary which became due once the *Kerr* case was decided was not an obligation due at the time of death con-

cerning which he then had the right to demand payment or enforce collection. 5 U.S.C. 652(b)(2); *Mendez* v. *United States,* 96 F. Supp. 326 (Ct. Cl. 1951); see also *Dr. Pepper Bottling Company, et al.* v. *Industrial Commission of Colorado, et al.,* 134 Colo. 238, 301 P. 2d 710; *State* v. *Russell,* 84 Mont. 61, 274 P. 148; *McVeany* v. *New York,* 80 N. Y. 195, 36 Am. Rep. 600.

As the District Court said: "At the time of the decedent's death there was no determination that the decedent was entitled to anything." Such being the case there was nothing "due" the decedent and accordingly Sections 61(f) and 61(g), Title 5, U. S. Code, clearly did not apply to the settlement subsequently made.

In sum, then, Joyce was not "an employee" at the time of his death within the meaning of the statute and he did not become one until his status as such was adjudicated in *Kerr.* Therefore, his right to unpaid salary was nonexistent at the time of death.

The case of *Ashton* v. *Ashton,* 117 A. 2d 459, (D. C. Mun. App. 1955), cited by appellant is inapposite. That case dealt with "unpaid compensation" due a government employee at the time of his death following uninterrupted service. No question of an illegal discharge was before the Court upon the determination of which, as is the case here, the decedent's entitlement to back salary depended.

II. TITLE 5, SECTION 652(b)(2), UNITED STATES CODE, IS APPLICABLE

There is no dispute that Joyce filed his action for reinstatement as a preference eligible on the ground that his discharge was in violation of the Veterans' Preference Act of 1944, as amended. Where service is interrupted under that Act (5 U.S.C., Section 863) and the employee is "afterward reinstated or restored to duty on the ground that such discharge, suspension, or furlough was unjustified or unwarranted," he is then but not beforehand entitled to back salary. 5 U.S.C., Section 652(b)(2). And when the

back salary is found due pursuant to 652(b)(2), it is payable to the employee if living and if not living to his estate. No provision is made in 652(b)(2) for the payment to any statutory beneficiary such as is fixed in 61(f). Nor is it reasonable that there should be, for 61(f) was intended only to facilitate the settlement of the accounts of decedents who at the time of death enjoyed an employee status. Section 61(f) did not contemplate payment where the very entitlement of the decedent to the office was yet to be adjudicated.

Joyce died without employee status which was not determined until the appeal in *Kerr* was decided on the basis that the removal under Section 863, Title 5, United States Code, was unjustified or unwarranted. Hence, the moneys paid to appellant were payable under 652(b)(2) and belong to Joyce's estate.

III. THE DISTRICT COURT HAD JURISDICTION UNDER D. C. CODE, SECTION 20-504

Jurisdiction below was invoked under D. C. Code, Section 20-504, which specifically embraces the type of proceeding involved here. Appellee was a "person interested in" Joyce's estate; his petition alleged that the appellant had in her hands and had omitted to return in her inventory moneys belonging to the estate; and the appellant asserted title to those moneys in hereself and adversely to the estate. Under such circumstances, the District Court had jurisdiction. *Watkins* v. *Rives*, 75 U. S. App. D. C. 109, 125 F. 2d 33.

Appellant complains that appellee is without standing to attack the action of the Small Business Administration in making the payment with which we are concerned to her as the widow. She says that the proceedings in the District Court were tantamount to a collateral attack upon that Agency's action. But it is of no consequence that the Small Business Administration in making payment to the appellant individually may have mistakenly relied upon 61(f). It is not the source of payment nor the supposed authority under which payment was made that is important. The only question is whether the moneys admittedly paid for

back salary and reaching the hands of the appellant constitute an asset of the estate. In light of the facts of this case it is apparent that the back salary was not due until *Kerr* was decided, that when so due it was payable under 652(b)(2) and, therefore, that the moneys constitute an asset of the estate.

CONCLUSION

For the foregoing reasons, appellee respectfully submits that the judgment of the District Court should be affirmed.

Respectfully submitted,

Richard A. Mehler
George J. Goldsborough, Jr.
Charles P. Hovis

Attorneys for Appellee

SUPPLEMENTAL APPENDIX

(Filed May 14, 1954)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2077-'54

EDWARD M. JOYCE, 3120 - 16th Street, N. W., Washington, D. C., *Plaintiff*

vs.

WENDELL B. BARNES, Administrator, Small Business Administration, 811 Vermont Avenue, N. W., Washington 25, D. C., *Plaintiff*

and

PHILLIP M. YOUNG, Chairman, GEORGE M. MOORE, FREDERICK J. LAWTON, United States Civil Service Commissioners, 8th and F Street, N. W., Washington 25, D. C.
Defendants

Complaint for Restoration to Civil Service Employment

1. The amount in controversy exceeds the value of $3,000.00 exclusive of interest and costs. This court has jurisdiction under the provisions of Sections 1331 and 1332 of Title 28, United States Code.

2. Plaintiff is a citizen of the United States and a resident of the District of Columbia and an honorably discharged, disabled, veteran of World War I, entitled to all rights and benefits of the Veterans' Preference Act of 1944, as amended. The defendant, Wendell B. Barnes, is the Administrator of the Small Business Administration and is sued in that capacity. Defendants Philip M. Young, George M. Moore, and Frederick J. Lawton are the United States Civil Service Commissioners and are sued in that capacity.

3. On or about September, 1953 and for many years prior to that time, plaintiff was employed in the classified

Civil Service of the United States. At said time and for some time prior thereto, plaintiff was employed as an Administrative Officer in the District of Columbia office of the Small Defense Plants Administration.

4. On or about September 30, 1953, plaintiff was illegally discharged from the Small Defense Plants Administration and was not transferred to the Small Business Administration, in violation of the Veteran' Preference Act of 1944, as amended, and more particularly in violation of the provisions of Section 12 of said Act, and of the Civil Service rules and regulations promulgated thereunder.

5. Plaintiff was separated from the Small Defense Plants Administration without regard to his rights as set forth in paragraphs two (2), three (3), and four (4) and although the functions he was performing were transferred to the then newly created Small Business Administration he was not transferred to the new agency, the Small Business Administration. It being the contention of the Small Business Administration that Section 218(b) of the Small Business Act, Public Law 163 granted authority for the Selection of employees to be transferred to Small Business Administration. Section 218(b) of Public Law 163 reads as follows:

"The President may also provide for such transfers, of records, property, and personnel from the Small Defense Plants Administration, during the period of its liquidation, as he considers appropriate to assist the Small Business Administration in carrying out its functions under this Title."

The head of the agency interpreted said section as repealing the Veterans' Preference Act of 1944, as amended, and all pertinent Civil Service rules and regulations by implication.

6. Plaintiff contends that such an interpretation cannot be by any means given to the said section under the

laws of this jurisdiction, and that the head of the agency erred in applying such an interpretation. Plaintiff contends that Section 218(b) of Public Law 63 must be interpreted in harmony and in conjunction with other provisions of the same Act and with the Veterans' Preference Act. Section 205(a) of Public Law 163 provides, in part:

> ". . . The Administrator is authorized, subject to the civil service and classification laws, to select officers, employ, appoint, and fix the compensation of such officers, employees, and agents as shall be necessary to carry out the provisions of this title; . . ."

Plaintiff contends that since the 82nd Congress did not repeal the Veterans' Preference Act, and since the Veterans' Preference Act and said Acts of 82nd Congress are harmonious and not repugnant to each other, both should have been complied with in making any reduction in force.

7. Continuously since September, 1953, plaintiff has pursued his administrative remedies in the Agency and in the United States Civil Service Commission. Plaintiff has exhausted all of his Administrative remedies and now has no other remedy except resort to this court. Plaintiff is ready, willing, and able to resume his duties as Administrative Office in the now Small Business Administration.

WHEREFORE, The premises considered the Plaintiff prays:

1. That the process of the Court issue requiring the defendants to appear and answer the exigencies of this complaint.

2. That an order be entered herein declaring as null and void and of no legal effect, and setting aside the action of the Small Defense Plants Administration, now the Small Business Administration, in terminating plaintiff's service as of the close of business September 30, 1953 and likewise declare null and void and of no legal effect and setting aside all decisions of the United States Civil Service Com-

mission affirming, or in any way sustaining the said agency's terminating the Plaintiff's service.

3. That an order be entered herein directing the defendant, Wendell B. Barnes, to take or cause to be taken, appropriate action to restore the plaintiff to his position of Administrative Officer, effective as of September 30, 1953.

4. And for such other and further relief as to this Honorable Court may seem just and proper.

/s/ EDWARD M. JOYCE
Edward M. Joyce
433 New Jersey Avenue, S. E.
Washington 3, D. C.
LI. 4-4383

/s/ C. B. COLLINS
C. B. Collins
Attorney for Plaintiff
1025 Vermont Avenue, N. W.
Washington 5, D. C.
NA. 8-7808

(Filed December 5, 1955)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2077-'54

EDWARD M. JOYCE, *Plaintiff*

vs.

WENDELL B. BARNES, ET AL., *Defendants*

Order Joining Cases for Purpose of Appeal

This cause came on to be heard the 10th day of October, 1955 on cross motions for summary judgment, and upon consideration thereof it was determined, and was stipulated by counsel for both parties, that the law in question

is the same as that in Kerr vs. Barnes (2406-54) which has been noted for appeal; therefore it is by the Court this 2nd day of December, 1955,

ORDERED, that the final determination of Kerr vs. Barnes, shall also govern the instant controversy.

/s/ LUTHER W. YOUNGDAHL
Judge

Seen, approved and agreed to:

/s/ CATHERINE B. KELLY
Asst. U. S. Atty.

Excerpt From Transcript of Proceedings on Motion for Rule to Show Cause

The Court: At the time of the decedent's death there was no determination that the decedent was entitled to anything. I therefore hold 61 (f) is not applicable to the situation existing here. I will sign an order directing the widow to report and account for the assets of $20,479.41 in the estate. * * *